

Present were: Anderson (Chair); McDonough (Clerk); Jeton, Brown, Batchelder (Members); Baime and Boness (Associate Members).

The meeting opened at 7:00 p.m.

Petition No.: 3910

Premises affected: 400 South Main Street

Petitioner: Andover School of Montessori

Attorney Mark Johnson represented the petitioner's request to continue the public hearing without opening to the January 6, 2011 meeting in order for the school to revise plans based on discussions with neighbors. Brown made a motion to continue the public hearing without opening to 1/6/11. Boness seconded the motion & the Board voted (6-0) to continue the hearing to 1/6/11.

Petition No.: 3906

Premises affected: 6 Black Horse Lane

Petitioner: Robichaud

Anderson explained that this is a continued public hearing because no one appeared at the 11/16/10 meeting to present it to the Board. However, since the public hearing was inadvertently omitted from the agenda for this meeting, the Board cannot open the public hearing. Brown made a motion to continue the public hearing to 1/6/11. Baime seconded the motion & the Board voted (6-0) to continue the public hearing to 1/6/11.

Petition No.: 3908

Premises affected: 21 Fossen Way

Petitioner: Mackay

Dana Mackay was present along with her architect, Steven Boucher. Petitioner is requesting a variance from 4.2.2 to install a permanent power generator in the side yard that would not meet the minimum side yard setback in the SRC district. Petitioner wishes to install a natural gas generator to alleviate inconveniences during power outages, which sometimes last more than one day. It is intended for emergency situations only and supplies minimal electricity to the house. The house has been recently reconstructed after a fire in 2009. The proposed location is flat & unused. The rear yard has a pool, septic tank & leech field. The left side yard is predominantly driveway. The proposed generator would be located 19' from the house and 10.5' from the side lot line. The exhaust is routed away from the house. The Board asked for alternate locations on the plot plan submitted with the application. Boucher noted the location of a terraced garden, pool equipment, HVAC, & utilities in alternate locations. Mackay has spoken with neighbors, none of whom voiced opposition. Brown asked for sound levels of the unit when in use. Boucher stated 68 decibels. Boness added that it would be audible 21' from the generator at that level. The generator would be tested once weekly for 30 minutes during the day. Petitioner agreed to a condition, if approved, that it not be tested at night or on weekends. The Board asked for any unusual circumstances that require maintenance of the power supply. Noted were heating, cooling & food preservation. The frequency of power outages has motivated the installation of the permanent generator. Boness suggested it be located around the pool, but Mackay states there are trees that would be in the way. The generator is 3'x5'. The lot slopes at the front, but is otherwise level. Inspector of Buildings, Kaija Gilmore, spoke in favor stating the hardship is related to the general ability to provide basic power service. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted (6-0) to close the hearing. McDonough sat off the deliberation. The Board then proceeded to deliberate. Brown felt insufficient hardship exists voicing concern over the generator running half hour per week. Jeton commented that her neighbor has one & that she is not bothered by it. However, she also noted that more &

Activity Room, 1<sup>st</sup> Floor, Memorial Hall Library, Elm Square

more people will be installing them, and that the current petitioner has considered alternate locations & the abutters. She feels it can be approved specifically for these circumstances. Boness voiced concern with the sound levels adding that there has to be a conforming location on the lot. He agreed with Brown. Baime can see the potential hardship related to lot shape & slope, but there is room in the rear lot. However, it does not meet the hardship criteria, is too close to the lot line. Anderson stated that he has a built-in generator and noise would be an issue on this particular substandard lot that is already full. He feels alternate locations exist that would allow a conforming placement of the generator. Anderson asked for a motion to approve with the condition that the weekly tests are limited to once with a maximum duration of 30 minutes during the daytime (10 a.m. – 5 p.m.). There was no motion. Jeton suggested the Board offer the Petitioner the option to withdraw without prejudice. Anderson made the offer & Boucher requested the petition be withdraw without prejudice. Jeton made a motion to allow the withdrawal without prejudice. Baime seconded the motion & the Board voted (6-0) to allow the withdrawal without prejudice.

Petition No.: 3911

Premises affected: 34, 36, 38 Dale Street

Petitioner: Holmes/Richards

Tyler Richards & Donna Holmes represented themselves in their request for a variance to demolish part of the existing non-conforming 3-family structure, construct additions/alterations that will not meet minimum setback requirements, to create non-conforming off-street parking & exceed the maximum number of driveways per lot. Mr. Richards submitted a construction management plan & reviewed the color-coded plan submitted with the application relating to existing & proposed parking. They have spoken with a structural engineer regarding the foundation. The proposed additions/alterations include replacing the 5'x15' front entryway with foundation, removing #38 & rebuilding a 2-story structure with full foundation under, renovate doors & windows, add 3 off-street parking spaces. Landscaping will also be installed. One tree will be removed (Norway Maple in front yard). Brown asked for a bedroom distribution per unit. Richards explained that #34 & #36 each have one bedroom, while #38 is a studio. They propose to make #38 a 2-bedroom unit and to occupy & #34 themselves, then eventually #38. Frank Perdicaro, rear abutter at 40 Dale St., spoke about continuous parking problems with past tenants. Karen Young, also of 40 Dale St., voiced concern over the overcrowded space being increased. She supports the improvements, but is also concerned about noise levels & access issues for municipal & emergency vehicles. Richards explained that the construction management plan would help mitigate such issues, adding that since it will be owner-occupied, they will be careful to screen tenants. The Board discussed with the petitioners & abutters construction schedules, construction vehicles & the possibility of scaling it down to the 2-family structure. Petitioners feel the economics wouldn't work out if it were only a 2-family. Anderson asked if they would close on the house next week as indicated at the beginning of the hearing regardless of the Board's decision. Richard's indicated that they would and that they could keep #38 as a studio. The Board waived a site view. Brown made a motion to close the public hearing. Jeton seconded the motion & the Board voted (6-0) to close the hearing. Boness sat off the deliberation. The Board then proceeded to deliberate. The Board discussed the addition of a 2-bedroom unit in #38, the location of the house & the street

Petition No.: 3906 (historical & sensitive), the parking issue, the fact that the house is located in the Industrial G district across from a contractor's yard, whether or not it would be beneficial to the Town, congestion on the lot, as well as proposed improvements. There are two variance requests: the use (already exists), the parking (increased due to the addition of the bedroom). It is impossible to meet off-street parking requirements on this lot. However, the building is in poor condition & it's better to improve it. The option of making a bigger, better 2-family was further explored, as well as the fact that the plans submitted with the application are insufficient for the magnitude of the work in the historical neighborhood. Anderson proposed a few options: continue the hearing &/or re-open the public hearing to hear whether the economics of a 2-family as opposed to a 3-family work out the same. He explained to the petitioners the requirement for a super-majority to approve the requested variances, as well as the options if denied or withdrawn without prejudice. Brown made a motion to re-open the public hearing & to continue it to 1/6/11 in order for Petitioners to submit additional information regarding converting to a 2-

family including financial data & revised plans. Baime seconded the motion & the Board voted (6-0) to continue to 1/6/11 keeping the same six members available for the continue hearing.

Petitioner No.: 3909

Premises affected: 2 Stevens Street

Petitioner: Andy Dental Laboratory

Jeton disclosed that her husband is a patient of Dr. Samuels, who was present. There were no objections to her participation in the hearing. Brown also disclosed he had previously been a patient of Samuels. No one objected. David Samuels, D.M.D., owner of 2 Stevens Street, presented the petition on behalf of his tenant, Ms. Kim. He explained that he brought the dental lab into town for dentists to use for custom work of pieces produced on the premises (i.e. temporary & permanent crowns, milling machines to cut pieces, staining to match colors, baking pieces, & dentures). Ms. Kim had applied for a zoning verification to obtain a business certificate, but was denied based on the use not being in conformance with the zoning bylaw. The lab provides personal service to his office, as well as other dental offices in town. Some work is sent off-site to other labs. He feels it falls under the use category of business, professional or administrative office, not research & development as alleged by the Inspector of Buildings. No patients are seen at the lab. Ms. Kim has been operating the lab at its current location for 6 months, before which time she operated in other locations in town. The lab work is either delivered, picked-up or mailed. Anderson explained that the Board needs to determine if relief is required. The Board discussed the implication that this business is Research & Development, the scale of the work done at the lab, & that it is more suitably categorized as a shop for custom work. It can be considered an ancillary function to a dental office. There are deliveries of materials (i.e. wax & porcelain blocks). There was no disagreement amongst the Board that it does not require a use variance. Samuels reminded the Board that Ms. Kim also applied as a Party Aggrieved. Brown made a motion to close the public hearing. McDonough seconded the motion & the Board voted (6-0) to close the public hearing. Boness sat off the deliberation. The Board then proceeded to deliberate. McDonough made a motion to find in favor of the applicant under Party Aggrieved to reverse the decision of the Inspector of Buildings and that a variance is not necessary, but that the use is custom work. Brown seconded the motion & the Board voted (5-0) to find in favor of the Party Aggrieved. Jeton will write the decision.

There was a motion to adjourn & a second. The Board voted (6-0) to adjourn the meeting at 8:45 p.m.